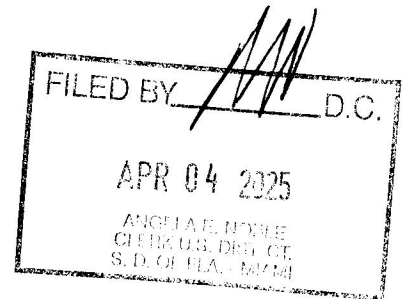


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No.: 1:25-cv-20010-PCH

Mario Mirabal

Appellant,



Deutsche Bank National Trust Company

Appellee.

APPELLANT'S RESPONSE TO APPELLEE'S ANSWER BRIEF
ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

MARIO MIRABAL

PRO SE

563 W 49 ST

MIAMI BEACH, FL 33140

solphax@gmail.com

786.479.6596

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT (CIP)**

Case No.: 1:25-cv-20010-PCH

Pursuant to Rule 26.1-1 of the Eleventh Circuit Rules, Appellant, Mario Mirabal, hereby files this Certificate of Interested Persons and Corporate Disclosure Statement. The following is a complete list of all persons and entities known to have an interest in the outcome of this case:

Plaintiff/Appellee:

Deutsche Bank National Trust Company,

**PHH Mortgage Corporation, related party due to Proof of Claim filed in
Bankruptcy Court.**

Defendant/Appellant:

**Appellant and Defendant, Attorney-in-Fact for Ariana Birencwajg, and Title
Holder**

**Ariana Birencwajg, original mortgagor, whose interest in the property was
transferred to Appellant via quitclaim deed and Power of Attorney.**

Related Parties and Counsel:

Kenneth Damas, Attorney for KP Investments Miami, LLC, previously

affiliated with The Law Offices of Adorno & Cunill, PL.

John Cunill, Attorney for KP Investments Miami, LLC.

KP Investments Miami, LLC, related party due to collusion allegations with Deutsche Bank in the property transaction.

James M. Schiff, Special Magistrate who executed the Warranty Deed while Mr. Mirabal was under bankruptcy protection.

Judge Corali Lopez-Castro, Bankruptcy Judge in the Adversary Proceeding.

Judge Paul C. Huck, Senior U.S. District Judge handling this Appeal.

Judge Tanya Brinkley, State Court Judge who was improperly informed of settlement status by Deutsche Bank.

Judge Gina Beovides, State Court Judge who granted Mr. Mirabal's Motion to Set Aside Judgment.

Judge Alexander Bokor, State Court Judge who presided over settlement discussions that Deutsche Bank failed to honor.

FDIC (Federal Deposit Insurance Corporation), related party by virtue of IndyMac's collapse and subsequent receivership.

Erica Johnson-Seck, known robo-signer whose involvement in fraudulent assignments is at issue.

Other Interested Parties:

U.S. Trustee's Office, involved in the bankruptcy proceedings.

Corporate Disclosure Statement:

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Deutsche Bank National Trust Company is a wholly-owned subsidiary of Deutsche Bank AG, which is publicly traded on the New York Stock Exchange (NYSE) under the symbol "DB."

I certify that I am unaware of any other persons or entities, other than those listed in this Certificate, who have an interest in the outcome of this appeal.

Dated: April 2, 2025.

Respectfully submitted,

Mario Mirabal

Pro Se Appellant

563 W 49th Street

Miami Beach, FL 33140

solphax@gmail.com

786.479.6596

TABLE OF CONTENTS

Table of Authorities

Appellant's Counterstatement of the Case and Facts

Summary of Argument

Argument

I. The Bankruptcy Court Erred in Dismissing the Adversary Proceeding for Lack of Standing

II. The Bankruptcy Court Demonstrated Bias and Ignored Evidence of Fraud

III. The District Court Must Address Ongoing Federal Scrutiny and the Invalid Assignment

IV. Irregularities in PHH's Proof of Claim, Settlement Statement Figures, and Bankruptcy Violations

V. TIMELINE OF FRAUD AND OBSTRUCTION

VI. THE COURT IS RESPECTFULLY REQUESTED TO RECOGNIZE APPELLANT'S VALID OWNERSHIP INTEREST AND LEGAL AUTHORITY TO CHALLENGE DEUTSCHE BANK'S FRAUDULENT CLAIMS

VII. FAILURE TO APPLY FLORIDA STATUTES AND PROCEDURAL IRREGULARITIES BY THE BANKRUPTCY COURT

VIII. PROCEDURAL MISCONDUCT AND IMPROPER GRANTING OF RELIEF FROM STAY

IX. The Court is Respectfully Requested to Acknowledge the Viability of the 1.540(b) Motion and the Adversary Proceeding

TABLE OF AUTHORITIES

Cases Relating to Foreclosure Misconduct and Fraudulent Assignments:

In Re David J. Stern, Florida Bar Case No. 2011-50,870(17C) (2014).

Pino v. Bank of New York, 121 So. 3d 23 (Fla. 2013).

U.S. Bank National Association v. Ibanez, 458 Mass. 637 (2011).

Glaski v. Bank of America, 218 Cal.App.4th 1079 (2013).

Deutsche Bank National Trust Company v. Maraj, 18 Misc. 3d 1123(A)
(Sup. Ct. Kings County 2008).

Indymac Bank, FSB v. Bethley, 2009 NY Slip Op. 50186 (N.Y. Sup. Ct.
2009).

Cases Supporting Authority to Act Under Power of Attorney and Quitclaim Deed:

Cox v. Burke, 706 So. 2d 43 (Fla. 5th DCA 1998).

Smith v. Bank of America, N.A., 143 So. 3d 1137 (Fla. 4th DCA 2014).

**Brantley v. Downey Savings & Loan Association, 154 Cal.App.4th 1074
(Cal. App. 2007).**

Rodriguez v. Wells Fargo Bank, N.A., 178 So. 3d 62 (Fla. 4th DCA 2015).

**Fairbank v. J.P. Morgan Chase Bank, N.A., 283 So. 3d 474 (Fla. 4th DCA
2019).**

APPELLANT'S COUNTERSTATEMENT OF THE CASE AND FACTS

In 2007, Ariana Birencwajg executed a note with IndyMac Bank, F.S.B. However, following the collapse of the real estate markets and a significant devaluation of properties by over 60%, Mrs. Birencwajg and Mr. Mirabal were forced into foreclosure under Case No. 08-23324-CA 01.

DISMISSAL OF INDYMAC'S FORCLOSURE ACTION

IndyMac Bank, F.S.B. ceased to exist as a corporate entity on July 11, 2008, when it was closed by the Office of Thrift Supervision (OTS) and the FDIC was named conservator. Subsequently, on March 19, 2009, IndyMac Federal Bank, FSB was placed into receivership, and substantially all of its assets were sold. The FDIC determined that the assets of IndyMac Federal were insufficient to make any distribution on general unsecured claims, which were effectively rendered worthless under Section 11(d)(11)(A) of the FDI Act, 12 U.S.C. 1821(d)(11)(A). As a result, the original debt was paid off as part of the FDIC deposit insurance fund (see 12 U.S.C. 1823(c)(4)).

On March 21, 2011, Judge Silver dismissed the foreclosure case against Mrs. Birencwajg and Mr. Mirabal because IndyMac Bank, F.S.B. had ceased to exist. Thus, any purported assignment of the mortgage from IndyMac Bank to Deutsche Bank would be fraudulent and void since IndyMac Bank was no longer a valid entity capable of assigning interests.

FRAUDULENT ASSIGNMENT AND DEUTSCHE BANK'S IMPROPER ACTIONS

Despite IndyMac Bank, F.S.B.'s closure, a fraudulent assignment of the mortgage was made to Deutsche Bank National Trust Company on June 18, 2010. This purported assignment was executed almost two years after IndyMac Bank ceased to exist as a corporate entity and more than a year after IndyMac Federal Bank, FSB was placed into receivership by the FDIC. Therefore, the assignment was legally void from its inception.

On January 30, 2013, Deutsche Bank filed a Lis Pendens as Trustee of the IndyMac INDX Mortgage Trust 2007-AR5, citing the fraudulent assignment under a Pooling and Servicing Agreement dated March 1, 2007 (CFN 2013R0078065, DR Bk 28466 Ps 1726). Deutsche Bank misrepresented its standing by failing to provide proper documentation establishing an unbroken chain of title.

During this case DEUTSCHE BANK NATL TR CO VS MIRABAL, MARIO Local Case Number: 2013-002778-CA-01 Filing Date: 01/22/2013, multiple Requests to Produce were filed by Mr. Mirabal pursuant to Rule 1.350 of the Florida Rules of Civil Procedure, seeking evidence of Deutsche Bank's standing. Deutsche Bank failed to respond within the allowed timeframe and waived its right to object through unreasonable delay. Consequently, the case was dismissed due to Deutsche Bank's failure to establish standing.

It was during these proceedings that a fraudulent assignment of mortgage from IndyMac to Deutsche Bank was entered into the record, further underscoring Deutsche Bank's lack of legitimate interest in the property.

**MISREPRESENTATION BY DEUTSCHE BANK IN THE PRESENT
APPEAL**

Deutsche Bank's statement of the case and facts in this appeal is another example of their continuous effort to misrepresent the facts and mislead the Court. Deutsche Bank falsely claims that Mrs. Birencwajg defaulted in 2013, despite the fact that the original foreclosure case was lost by IndyMac in 2011.

IndyMac had ceased to exist, and the debt had been effectively extinguished by the FDIC's declaration of insolvency and lack of assets to cover unsecured claims. Therefore, any subsequent foreclosure action by Deutsche Bank was baseless and fraudulent.

Deutsche Bank also falsely claims that it attempted to settle the matter in 2009. In fact, Deutsche Bank did not become involved until 2013, when it attempted to assert an assignment that was fraudulent and legally void.

MISCHARACTERIZATION OF FINAL JUDGEMENT AND SETTLEMENT AGREEMENT

Deutsche Bank's assertion that a final judgment was entered in 2013 is also inaccurate. The alleged judgment was recalled as improper by Judge Gina Beovides on May 15, 2023 (Order 33711:4570, Order Granting Mario Mirabal's Motion to Set Aside Judgment).

Moreover, Deutsche Bank omits critical facts concerning the Agreed Order of Dismissal Based on Settlement for \$590,000.00, which was entered by Judge Alexander Bokor on March 5, 2020. In this Order, Judge Bokor stated:

“This Court has been advised that the matter has been settled as to all parties and therefore, it is hereby:

ORDERED AND ADJUDGED that this case is dismissed with prejudice. The Court reserves jurisdiction to enforce the settlement and to enter orders necessary to this enforcement, or to set aside this Order of Dismissal if the matter has not been resolved. The Court also reserves jurisdiction to assess attorney's fees and costs, if applicable, upon proper motion and hearing.” (Case No: 2018-018704-CA-01, Hon. Alexander Bokor, CIRCUIT COURT JUDGE)

Furthermore, Deutsche Bank’s own counsel jointly filed a Motion to Remove from Trial Docket Due to Pending Settlement, which was granted by Judge Bokor on March 6, 2020. The order explicitly allowed the parties time to effectuate settlement. However, Deutsche Bank subsequently reneged on this agreement and instead colluded with KP Investments Miami, LLC to continue proceedings with the intent of removing Mr. Mirabal from negotiations.

SUMMARY OF DEUTSCHE BANK'S MISREPRESENTATIONS

Fraudulent Assignment: The assignment of mortgage from IndyMac Bank to Deutsche Bank on June 18, 2010, was fraudulent, as IndyMac ceased to exist as a corporate entity in 2008.

FDIC Determination: The FDIC determined that unsecured claims had no value.

Failure to Provide Evidence: Deutsche Bank consistently failed to provide

evidence of its standing.

Improper Judgment Claim: Deutsche Bank incorrectly claims that a valid final judgment was entered, omitting the fact that it was set aside by Judge Beovides.

Violation of Settlement Agreement: Deutsche Bank breached the settlement agreement established by Judge Bokor.

Collusion with KP Investments: Deutsche Bank colluded with KP Investments to deprive Mr. Mirabal of his equity and property rights.

SUMMARY OF ARGUMENT

Deutsche Bank's argument that Mario Mirabal "lacked standing" to challenge the fraudulent assignment of mortgage is fundamentally flawed. The validity of Deutsche Bank's standing and rights as an assignee rests on the legitimacy of the underlying assignment itself. When that assignment is fraudulent or otherwise void, the question of standing cannot be resolved without first determining the validity of the assignment.

The doctrine of "clean hands" and principles of equity prevent a party from asserting rights based on fraudulent or void documents. Courts have repeatedly held that a borrower, especially one holding title and acting with a valid power of attorney, can challenge fraudulent assignments where the assignments directly impact the borrower's property rights.

Further, Judge Corali Lopez-Castro demonstrated clear bias in dismissing the adversary proceeding by stating “this court does not want drama.” The improper dismissal of valid claims of fraud and collusion during ongoing bankruptcy proceedings undermines the integrity of the judicial process. Furthermore, Judge Lopez-Castro granted KP Investments’ Motion For Relief From Stay while serious allegations of fraud and collusion were pending against Deutsche Bank and KP Investments, constituting a violation of bankruptcy protections and federal due process.

Moreover, Deutsche Bank’s reliance on cases such as *Harvey v. Deutsche Bank Nat’l Tr. Co.*, 69 So. 3d 300 (Fla. 4th DCA 2011) and *Vallely v. U.S. Bank, N.A.*, No. 2019-CA-88, 2020 Fla. Cir. LEXIS 840 is misplaced. These cases involved routine foreclosure proceedings, not instances of fraudulent or void assignments.

Additionally, Deutsche Bank ignores the fact that this case is under federal scrutiny. Judge Huck is aware of the ongoing investigation, which raises the stakes of proceeding without adequately addressing the fraudulent assignments and improper conduct of Deutsche Bank and KP Investments.

ARGUMENT

I. THE BANKRUPTCY COURT ERRED IN DISMISSING THE ADVERSARY PROCEEDING FOR LACK OF STANDING

Deutsche Bank’s entire argument hinges on the assertion that Mario Mirabal lacks standing to challenge the fraudulent assignment of mortgage because he was not a party to the assignment. However, the argument ignores crucial legal principles and mischaracterizes applicable case law.

Florida courts have recognized that parties who are not direct parties to an assignment may challenge the validity of the assignment where fraud, forgery, or other legal violations are alleged. In *Pino v. Bank of New York*, 121 So. 3d 23 (Fla. 2013), the Florida Supreme Court highlighted concerns about fraudulent foreclosure practices and the implications for broader systemic integrity.

Similarly, *U.S. Bank National Association v. Ibanez*, 458 Mass. 637 (2011), and *Glaski v. Bank of America*, 218 Cal.App.4th 1079 (2013), support the proposition that improper or void assignments render a party's standing void and unenforceable.

In *Cox v. Burke*, 706 So. 2d 43 (Fla. 5th DCA 1998), the court emphasized that parties who engage in fraudulent conduct are barred from asserting rights based on fraudulent or otherwise improper documents. The “clean hands” doctrine prevents Deutsche Bank from asserting rights under a fraudulent assignment.

Additionally, the assignment of mortgage upon which Deutsche Bank relies was executed June 18, 2010, two years after IndyMac ceased to exist as a corporate entity. The FDIC had declared that the assets of IndyMac Federal were insufficient to make any distribution on general unsecured claims. Deutsche Bank’s attempt to enforce a fraudulent assignment that was manufactured post-dissolution of IndyMac is void from its inception.

II. THE BANKRUPTCY COURT WAS BIASED AND IGNORED THE SUBSTANTIVE ISSUES OF FRAUD AND COLLUSION

Judge Corali Lopez-Castro dismissed the adversary proceeding with bias, stating that “this court does not want drama.” This statement is troubling

given the extensive evidence of fraud and collusion provided in the adversary proceeding.

The fact that the court improperly granted KP Investments' Motion For Relief From Stay during the bankruptcy proceeding, while serious fraud allegations were pending, further demonstrates prejudice against Mr. Mirabal. Granting this motion allowed KP Investments and Deutsche Bank to manipulate the judicial process to their benefit.

Additionally, Judge Lopez-Castro failed to address the serious fraud allegations against Deutsche Bank and KP Investments, including the fact that Deutsche Bank previously agreed to a settlement amount of \$590,000 before reneging and collaborating with KP Investments to increase the demand to \$1.3 million. The court's failure to address these collusive tactics is a miscarriage of justice.

III. THE DISTRICT COURT MUST ADDRESS THE ONGOING FEDERAL SCRUTINY AND THE INVALID ASSIGNMENT

This court is aware of the ongoing federal scrutiny surrounding these issues. Deutsche Bank's fraudulent assignment, which was executed after IndyMac ceased to exist, forms the basis for its standing claim. This fraudulent assignment has been presented to multiple courts, often with conflicting arguments and deceptive representations.

The ongoing federal scrutiny of this matter further emphasizes the need for this court to address the substantive claims of fraud. Deutsche Bank's continued insistence that Mr. Mirabal lacks standing ignores the broader context of these proceedings and the underlying fraudulent conduct.

IV. IRREGULARITIES IN PHH'S PROOF OF CLAIM AND SETTLEMENT STATEMENT FIGURES

A. Discrepancies in PHH's Proof of Claim and Deutsche Bank's Standing

PHH Mortgage Corporation entered a Proof of Claim in the bankruptcy proceedings. However, the Chapter 13 Status Report dated January 7, 2025, lists Deutsche Bank National Trust Company with a claim amount of \$108,000. This glaring inconsistency raises serious questions about who actually holds the mortgage and whether either PHH or Deutsche Bank has valid standing.

Furthermore, the discrepancy in the claimed amount suggests confusion or intentional misrepresentation. PHH and Deutsche Bank are attempting to simultaneously assert conflicting claims over the same debt. If Deutsche Bank's claim is legitimate, then PHH's Proof of Claim is fraudulent or vice versa. This inconsistency supports the broader assertion that these entities are acting in bad faith and lack a legitimate interest in the property.

B. Irregularities in the Warranty Deed

The Warranty Deed, executed by James M. Schiff as Special Magistrate, allegedly conveyed the property to KP Investments Miami, LLC for the token amount of \$10.00. This transaction occurred:

While Mr. Mirabal was under bankruptcy protection, invoking the protections of the automatic stay under 11 U.S.C. § 362(a).

While Deutsche Bank's standing was actively being challenged before

Judge Brinkley in the related 1.540(b) motion.

The manner of this conveyance raises several issues:

No proper service or notification was provided to Mr. Mirabal, the Defendant. This clear violation of due process suggests intentional wrongdoing and collusion between Deutsche Bank, KP Investments, and their attorneys.

The conveyance for \$10.00 is a gross undervaluation of the property, indicating an attempt to improperly transfer title without due process or legitimate financial transaction.

Additionally, this conveyance was made during the pendency of Mr. Mirabal's adversary proceeding, which sought to challenge the legitimacy of the mortgage assignments. The timing of the conveyance, coupled with the lack of proper notice, demonstrates bad faith on the part of Deutsche Bank and its collaborators.

C. Violation of the Automatic Bankruptcy Stay

Deutsche Bank argues that Mr. Mirabal cannot raise violations of the automatic stay because it was not addressed by the Bankruptcy Court when dismissing the adversary proceeding. This argument is disingenuous and fails to recognize that the violation of the automatic stay was central to Mr. Mirabal's adversary proceeding.

Under 11 U.S.C. § 362(a), an automatic stay immediately halts all proceedings against a debtor once a bankruptcy petition is filed. Despite this

clear statutory protection, Deutsche Bank, KP Investments, and their representatives proceeded to convey Mr. Mirabal's property during the stay period.

Furthermore, Deutsche Bank cannot claim the transaction was valid if it was conducted in violation of federal bankruptcy law. Their assertion that this issue was not preserved on appeal is incorrect, as it was actively pending as part of the adversary proceeding and Mr. Mirabal's arguments regarding the fraudulent assignment.

The transaction executed by the Special Magistrate is void ab initio due to its violation of the automatic stay. This further supports Mr. Mirabal's contention that the proceedings were tainted by fraud and misconduct.

D. Settlement Statement Discrepancies

The Settlement Statement (HUD-1) associated with the improper conveyance of Mr. Mirabal's property reveals troubling discrepancies that suggest manipulation of financial records and misrepresentation before the court.

The relevant figures are as follows:

Total Reduction Amount Due to Seller: \$1,422,897.79

Due Amount from Borrower: \$1,455,311.04

Deutsche Bank's listed claim in the Chapter 13 Status Report of
\$180,000.00

Warranty deed \$10.00

These figures are significant because:

They suggest that Deutsche Bank and KP Investments misrepresented the financial status and settlement negotiations to the courts.

The figures appear manipulated to create the false appearance of a shortfall, thereby justifying their claims of default and fraudulent foreclosure actions.

This manipulation occurred while Mr. Mirabal's 1.540(b) motion was pending before Judge Brinkley, and while Deutsche Bank's standing was actively being disputed. This demonstrates an intentional effort to circumvent Mr. Mirabal's legal rights by presenting fabricated or misleading financial documents.

Additionally, the discrepancy between PHH's Proof of Claim and Deutsche Bank's listed claim in the Chapter 13 Status Report of \$180,000.00 further illustrates the fraudulent nature of these proceedings. The records are inconsistent and cannot be reconciled without acknowledging the underlying fraud perpetrated by Deutsche Bank and PHH.

V. TIMELINE OF FRAUD AND OBSTRUCTION:

2010:

Standing Issues Begin: IndyMac Bank, F.S.B. ceases to exist as a corporate entity.

Despite this, a fraudulent assignment is made to Deutsche Bank National Trust Company after IndyMac's dissolution, calling into question Deutsche Bank's standing.

2021:

PHH Mortgage, acting on behalf of Deutsche Bank, negotiates a Continued Settlement Agreement in Judge Bokor's court for a settlement amount of \$590,000.

This agreement was documented and understood to be a final resolution of the matter, allowing for a reasonable resolution to the ongoing dispute.

2021 - 2022:

First Contract with KP Investments: Defendant signs a contract with KP Investments Miami, LLC. end of 2021 KP Investments cancels contract citing lack of funds

2022 second contract Immediately following this agreement, Deutsche Bank and PHH Mortgage reneged on the \$590,000 settlement, increasing the demand to \$1.3 million without justification.

KP Investments files a One-Count Specific Performance Suit, falsely claiming that Defendant refused to conduct title work, despite the fact that title work had already been completed.

2022 - 2023:

Coordinated Manipulation of Separate Courts: Deutsche Bank and KP Investments engage in a pattern of filing actions and making false representations across multiple courts to confuse and mislead the judicial

process.

Fraud and perjury in Judge Miller's court

Carlos Perez, representing KP Investments, commits perjury during deposition.

Admits his counsel was aware of defendants foreclosure and settlement , knowledge that defendant was having difficulties reaching deutsche bank , admits that his counsel engaged in conversations with counsel for Phh and or Deutsche Bank prior to filing specific performance suit.

The deposition of Carlos Perez containing this evidence was never filed by Ticktin Law Firm, thereby depriving Judge Miller of critical information that would have exposed the fraud. the deposition is latter entered into evidence as part of Mr. Mirabal's 1.540 (b) motion

Further, Counsel for KP Investments in the specific performance case, Kenneth Damas, then a partner at the Law Offices of Adorno & Cunill, PL (now operating independently but still serving as counsel for KP Investments in related state and federal cases), committed perjury at trial before Judge Miller by falsely representing that approximately \$400,000 would remain for the Defendant if the contract was enforced.

Damas made this assertion while knowingly concealing the fact that Deutsche Bank, with whom he was in contact prior to filing suit, was by now demanding more than the agreed contract amount of \$1.3 million. This deliberate misrepresentation was intended to create the illusion of financial benefit to the Defendant when, in reality, enforcement of the contract would force the Defendant to sell at a substantial deficit.

2023:

Bankruptcy Filing: Defendant files for bankruptcy in an effort to make the original settlement negotiation work and resolve the matter through court-supervised means.

Misrepresentation and Manipulation by Deutsche Bank and KP

Investments:

They work together to mislead the bankruptcy court and circumvent judicial oversight.

Warranty deed executed while Defendant is under stay and protection.

2023 -2024:

Misleading Statements to Judge Brinkley:

Deutsche Bank represents to Judge Brinkley that a payoff has been received, suggesting that all parties (Mr. Mirabal and Deutsche Bank) had reached an amicable settlement, while concealing the fact that the property had already been conveyed to KP Investments.

2024 -2025:

Federal Scrutiny and Additional Filings:

Defendant files Lis Pendens and multiple motions in state and federal courts to challenge fraudulent conveyances.

**VI. THE COURT IS RESPECTFULLY REQUESTED TO RECOGNIZE
APPELLANT'S VALID OWNERSHIP INTEREST AND LEGAL
AUTHORITY TO CHALLENGE DEUTSCHE BANK'S FRAUDULENT
CLAIMS**

A. Valid Ownership Interest Established by Deed

Under Florida Statutes § 695.01, a properly recorded deed serves as constructive notice to all parties, establishing the legal rights of the grantee (here, Mario Mirabal). This statute provides:

“No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a term of more than one year, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law.”

The Quitclaim Deed from Ariana Birencwajg to Mario Mirabal was properly executed, notarized, and recorded in the appropriate county records. As such, it is valid and enforceable under Florida law. Any subsequent claims to the property by Deutsche Bank or other parties based on the purported fraudulent assignment are legally void and cannot overcome the constructive notice provided by the properly recorded deed.

B. Authority to Act Under Power of Attorney

Under Florida Statutes § 689.111, titled “Conveyances of Homestead; Power of Attorney for “Unmarried Individuals”, an individual acting under a properly executed and valid power of attorney has the authority to act on behalf of the principal in matters related to the property, including litigation and administrative proceedings. This statute states:

“Any conveyance, transfer, or mortgage of real property, or of any interest therein, by an unmarried individual who has executed a power of attorney authorizing another person to act on the individual’s behalf, shall be valid if such power of attorney is in writing and properly executed.”

Ariana Birencwajg executed a valid power of attorney in favor of Mario Mirabal, authorizing him to act on her behalf in matters concerning the property. As the attorney-in-fact, Mr. Mirabal possesses the legal authority to pursue claims, defend against foreclosure, and challenge fraudulent

assignments that impact his interest in the property.

C. Combined Authority of Deed and Power of Attorney

In addition to the recorded quitclaim deed, the valid power of attorney provides further legal authority for Mr. Mirabal to pursue his claims and defenses. Florida law recognizes the standing of a party who holds title to property via validly executed and recorded deeds and who possesses a valid power of attorney.

By recording the deed under Florida Statutes § 695.01, Mr. Mirabal provided constructive notice of his ownership to all parties, including Deutsche Bank and PHH Mortgage Corporation. Any attempts to challenge Mr. Mirabal's standing on the basis that he is not the original mortgagor are misguided and unsupported by Florida law.

Furthermore, Florida Statutes § 689.111 explicitly recognizes the validity of conveyances and transfers made under power of attorney for unmarried individuals, further solidifying Mr. Mirabal's right to challenge fraudulent foreclosure attempts and assert his ownership interest.

D. Appellant's Standing to Challenge Fraudulent Assignments

By virtue of holding valid title to the property and acting under a legally binding power of attorney, Mr. Mirabal has clear standing to challenge Deutsche Bank's fraudulent assignment and foreclosure attempts. Deutsche Bank's assertion that Mr. Mirabal lacks standing is based on misrepresentations of the law and ignores the validity of the deed and power

of attorney.

Additionally, Deutsche Bank's reliance on *Altier v. Fed. Nat'l Mortg. Ass'n*, No. 1:13-cv-164-MW/GRJ, 2013 WL 6388521 (N.D. Fla. Dec. 6, 2013) is misplaced. In that case, the plaintiffs lacked standing because they had no legal interest in the property. Here, Mr. Mirabal has a valid quitclaim deed and power of attorney, making his standing fundamentally different from the plaintiffs in *Altier*.

The assignment of mortgage upon which Deutsche Bank relies was executed June 18, 2010, two years after IndyMac ceased to exist as a corporate entity. The FDIC had declared that the assets of IndyMac Federal were insufficient to make any distribution on general unsecured claims. Deutsche Bank's attempt to enforce a fraudulent assignment that was manufactured post-dissolution of IndyMac is void from its inception.

VII. FAILURE TO APPLY FLORIDA STATUTES AND PROCEDURAL IRREGULARITIES BY THE BANKRUPTCY COURT

The Bankruptcy Court, presided over by Judge Corali Lopez-Castro, failed to properly apply well-established Florida statutes that directly support Appellant's legal standing and authority in this matter. This failure to apply statutory law, combined with procedural irregularities and apparent bias, undermines the legitimacy of the adverse rulings and supports Appellant's request for relief.

1. Violation of Florida Statutory Law

Appellant's legal standing and authority to challenge fraudulent assignments, initiate proceedings, and protect his property rights are clearly established under Florida law. However, the Bankruptcy Court failed to

apply the following critical statutes:

Florida Statutes § 695.01 (Recordation of Instruments; Notice to Creditors)

This statute provides that no conveyance, transfer, or mortgage of real property shall be valid against subsequent purchasers unless it is recorded according to law. Appellant, as the rightful titleholder through a duly executed quitclaim deed, is protected under this statute.

Florida Statutes § 689.111 (Conveyances of Homestead; Power of Attorney for Unmarried Individuals) This statute explicitly allows individuals to

convey their interest in homestead property via power of attorney.

Appellant, holding a valid power of attorney from Ariana Birencwajg, has the legal authority to act on her behalf in all matters pertaining to the property. This authority includes the right to challenge fraudulent assignments, pursue claims, and protect the property from improper foreclosure actions.

Judge Lopez-Castro's failure to recognize Appellant's rights under these statutes is a reversible error. The court's refusal to adjudicate Appellant's claims properly, despite clear statutory authority supporting his standing, demonstrates a significant departure from established Florida law.

2. Procedural Irregularities and Improper Relief From Stay

The court's actions were further compromised by procedural irregularities, including:

Granting KP Investments' Motion for Relief from Stay: Despite ongoing allegations of fraud and collusion, Judge Lopez-Castro allowed KP Investments to proceed with actions against the property, in violation of

Appellant's rights under 11 U.S.C. § 362(a), which provides for an automatic stay of all proceedings against the debtor once a bankruptcy petition is filed.

Failure to Consider Pending Fraud Allegations: Judge Lopez-Castro dismissed the adversary proceeding without proper consideration of the serious allegations of fraudulent assignments and collusion between Deutsche Bank and KP Investments. By doing so, the court failed to provide Appellant with a meaningful opportunity to be heard.

Bias Against Appellant: The judge's statement that "this court does not want drama" is evidence of bias and prejudice against Appellant's legitimate claims. The improper dismissal of valid claims of fraud and collusion undermines the integrity of the judicial process and violates Appellant's due process rights.

3. Misapplication of Standing Doctrine

Deutsche Bank has repeatedly asserted that Appellant lacks standing to challenge the assignment of mortgage because he was not a party to the assignment. However, Deutsche Bank's assertion is fundamentally flawed for several reasons:

Fraudulent Assignment: The purported assignment from IndyMac to Deutsche Bank, dated June 18, 2010, is void because IndyMac ceased to exist as a corporate entity in 2008. An assignment made post-dissolution of the assignor is legally invalid and unenforceable.

Authority to Challenge Fraudulent Conduct: Appellant, as the rightful titleholder through a valid quitclaim deed and attorney-in-fact for Ariana

Birencwajg, has a legally cognizable interest in protecting the property from fraudulent foreclosure actions. This interest is recognized under Florida law and cannot be dismissed merely because Appellant was not a party to the original mortgage contract.

Applicable Case Law Supporting Standing: Courts have recognized the right of individuals holding title or acting under power of attorney to challenge improper or fraudulent assignments. (Cox v. Burke, 706 So. 2d 43 (Fla. 5th DCA 1998); Smith v. Bank of America, N.A., 143 So. 3d 1137 (Fla. 4th DCA 2014); Rodriguez v. Wells Fargo Bank, N.A., 178 So. 3d 62 (Fla. 4th DCA 2015); Fairbank v. J.P. Morgan Chase Bank, N.A., 283 So. 3d 474 (Fla. 4th DCA 2019).)

4. Relevance to Pending Adversary Proceeding and 1.540(b) Motion

The failure to apply relevant Florida statutes, coupled with procedural irregularities and bias, demonstrates that Judge Lopez-Castro improperly dismissed the adversary proceeding. The 1.540(b) motion, detailing fraud and collusion, was never properly adjudicated, further undermining the legitimacy of the court's rulings.

VIII. PROCEDURAL MISCONDUCT AND IMPROPER GRANTING OF RELIEF FROM STAY

Deutsche Bank's assertion that the issue of violating the Bankruptcy Code's automatic stay, 11 U.S.C. § 362(a) was not preserved on appeal is factually incorrect. The matter was indeed raised and argued during a hearing on December 12, 2024, which had been scheduled for the purpose of establishing procedures and deadlines related to the adversary proceeding (Case No. 24-01418-CLC).

Instead of following the procedural purpose of the hearing, Beth A. Norrow,

acting as a Visiting Attorney who appeared Pro Hac Vice for Deutsche Bank, moved to have the conveyance and sale of Mr. Mirabal's homestead approved, despite the fact that the Warranty Deed had already been executed a month earlier, during the period of bankruptcy protection.

During this hearing, Judge Corali Lopez-Castro improperly allowed the request to proceed and further demonstrated bias by stating to Mr. Mirabal that he would "have to get used to it, that this matter had become [his] life and [he] had to let it go." Such a statement not only shows a lack of impartiality but also a disregard for Mr. Mirabal's substantive rights under the Bankruptcy Code.

When Mr. Mirabal attempted to assert his legal rights, explaining that he held valid title and power of attorney to act on matters concerning the property, Judge Lopez-Castro abruptly ended the discussion by standing up and leaving the chamber. This act left Mr. Mirabal without recourse or clarity regarding the issues raised, amounting to a complete denial of due process.

1. Violation of Automatic Stay (11 U.S.C. § 362(a))

The automatic stay provision under 11 U.S.C. § 362(a) serves as a fundamental protection for debtors, prohibiting all entities from:

Initiating or continuing legal proceedings against the debtor or property of the estate,

Enforcing a lien against the debtor's property,

Commencing any action to obtain possession of property belonging to the debtor.

The conveyance and sale of Mr. Mirabal's homestead to KP Investments, orchestrated during the period of bankruptcy protection, constitutes a clear violation of 11 U.S.C. § 362(a). The fact that the conveyance occurred while standing and title were actively in dispute exacerbates the seriousness of the violation.

2. Bias and Improper Conduct by the Bankruptcy Court

The court's refusal to hear Mr. Mirabal's arguments, abruptly leaving the chamber, and allowing the conveyance to proceed without proper adjudication demonstrates a clear bias and failure to provide due process.

Furthermore, the court's dismissal of Mr. Mirabal's valid concerns about fraudulent assignments and improper conveyance without adjudicating his 1.540(b) motion and adversary proceedings against both Deutsche Bank and KP Investments amounts to judicial misconduct.

A court-ordered subpoena of the transcript of that hearing will provide proof of the procedural misconduct and bias demonstrated on that day. Mr. Mirabal is confident that a review of the record will substantiate these claims of improper conduct and bias.

**IX. THE COURT IS RESPECTFULLY REQUESTED TO
ACKNOWLEDGE THE VIABILITY OF THE 1.540(B) MOTION AND
ADVERSARY PROCEEDING**

Deutsche Bank has repeatedly acted to obstruct or dismiss Mr. Mirabal's

Rule 1.540(b) motion and Adversary Proceeding, which detail the fraud and collusion perpetrated by Deutsche Bank and KP Investments. These motions remain unadjudicated, and Deutsche Bank's attempt to proceed with foreclosures despite the pending motions demonstrates their bad faith.

RELIEF REQUESTED

Appellant respectfully requests that this Court grant the following relief:

Reverse the Bankruptcy Court's Order Dismissing the Adversary Proceeding, recognizing that Judge Lopez-Castro demonstrated bias and improperly dismissed the proceeding without consideration of substantive evidence of fraud and collusion.

Issue an Order Declaring the June 18, 2010 Assignment from IndyMac to Deutsche Bank as Void, due to IndyMac ceasing to exist as a corporate entity in 2008 and the assignment being executed post-dissolution by David J Stern and Mrs Seck.

Restore Appellant's Title and Recognize Standing, acknowledging Mr. Mirabal's valid title ownership via quitclaim deed and power of attorney, affirming his right to challenge fraudulent assignments and foreclosures.

Vacate All Orders Based on Fraud and Collusion, including improper relief from stay granted to KP Investments and adverse orders resulting from Deutsche Bank's fraudulent representations.

Alternatively, reopen the Adversary Proceeding Under This Court's Jurisdiction as a District Court Judge, and adjudicate the matter directly, or alternatively, assign the matter to a different District Court Judge if the Court prefers. This request is made to avoid remand to the Bankruptcy Court and Judge Lopez-Castro due to demonstrated bias and procedural irregularities.

Refer Matters of Misconduct to Appropriate Disciplinary Authorities or Investigative Agencies, as necessary, given the fraudulent conduct by Deutsche Bank, PHH Mortgage KP Investments and their agents.

Provide Any Additional Relief as This Court Deems Just and Proper, ensuring justice is served and procedural integrity is restored.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was served via US mail on 04/ 3 /2025 TO:

Ari Newman, 333 s.e. 2nd ave suite 4400 Miami , FL 33131 &

Beth A. Norrow 777 s flagler drive suite 300 East West Palm Beach, FL 33401


MARIO MIRABAL

563 W 49 ST

Miami Beach FL 33140

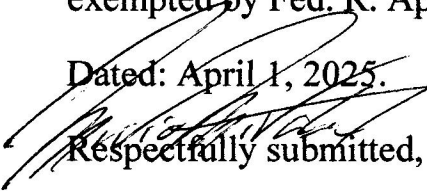
MIAMI BEACH,FLORIDA 33140

SOLPHAX@GMAIL.COM

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief complies with the typeface requirements set forth in Fed. R. Bankr. P. 8015(a)(5)(A) and (a)(7)(B)(i). This Brief was prepared in Microsoft Word using 14-point Times New Roman type and contains 5,994 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Dated: April 1, 2025.



Respectfully submitted,

Mario Mirabal

Appellant, Pro Se

solphax@gmail.com

786.479.6596